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Family Name						
Given Name/s						
Student Number						
Teaching Period	Semester 1, 2018					

LWA316 – Intellectual Property Law

### DURATION

Reading Time: 20 minutes

Writing Time: 120 minutes

### INSTRUCTIONS TO CANDIDATES

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1.1 The examination has two sections.

<b>Section A:</b> Suggested Time: 75 minutes	<b>One Compulsory question:</b> All students must answer this question. This question is worth 30 marks
<b>Section B:</b> Suggested Time: 45 minutes	<b>Essay Questions:</b> Answer ONE (1) only of 3 questions. This section is worth 20 marks

Answer all questions in the examination booklet provided. An additional booklet will be provided if required. Please ensure that your name and student number and the questions attempted are clearly indicated on each booklet used.

1.2 Note that questions **ARE NOT** of equal value.

### EXAM CONDITIONS

You may begin writing from the commencement of the examination session. The reading time indicated above is provided as a guide only.

This is an OPEN BOOK examination

No calculators are permitted

Any handwritten material is permitted

Any hard copy, English dictionary is permitted (annotated allowed)

#### ADDITIONAL AUTHORISED MATERIALS

#### EXAMINATION MATERIALS TO BE SUPPLIED

Any printed material with the exception of CDU Library books

1 x 20 Page Book  
1 x Scrap Paper

THIS EXAMINATION IS PRINTED  
DOUBLE-SIDED.

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# INTELLECTUAL PROPERTY LAW

## SECTION A

### Question 1 (Compulsory Question).

All students must answer both Part (a) and Part (b) of this Question

This question is worth 30 marks.

#### Part (a)

Nicholas Cage is a famous tennis player who also owns a company named Davos Ltd. Davos Ltd. is a company in Brisbane which sells tennis racquets. Nicholas has also trademarked the name 'Davos'. He advertised the Davos tennis racquets by making sports celebrity appearances on television advertisements which featured the Davos tennis racquets. The advertisements were very popular because Nicholas had a lot of tennis fans. The 'Davos' brand became very popular as the customers who bought the tennis racquets were Nicholas' tennis fans. As Nicholas was enjoying so much popularity, he decided to trade mark his name as well. Hence, he trademarked the name 'Nicholas Cage'.

Alan was Nicholas' former employee at Davos Ltd. who disliked Nicholas. Nicholas had an argument with Alan when he was working at Davos Ltd. as a secretary. When Alan left the company, he wanted to blackmail Nicholas as he was still angry with Nicholas. He registered the domain name [www.davos.com.au](http://www.davos.com.au) and offered to sell the domain name to Nicholas for \$1 Million. Nicholas was very upset about this as he had planned to register the same domain name but had been too busy to do so. Alan also started selling low quality tennis racquets with the name 'Nicky Cage'. Many people bought the low quality tennis racquets as they thought the 'Nicky Cage' tennis racquets were made by Davos Ltd.

Nicholas would like to bring an action against Alan. Advise Nicholas and Alan.

[15 Marks]

#### Part (b)

Michael bought some mp3 music by downloading it from a website which was owned by a company called Musico Pty. Ltd. The website was selling the mp3 music legally, and it was not selling any pirated music. Michael bought several John Lennon albums from that website and was very happy with his purchase. Michael liked the songs so much that he decided that he would play the music at his pub as he thought his customers would like the music too. The customers of his pub were charged an entrance fee for entering the pub.

The John Lennon albums were very popular at the pub and soon Michael had many people visiting his pub. As he started having so many customers who liked the music, he thought he would make some money by selling the music to those attending his pub. Michael used his home computer to make duplicate copies of the mp3 music and sold them to the customers of the pub. The duplicate copy of the music was of bad quality but Michael's customers were happy to buy the music from Michael as they were much cheaper than those sold by the website owned by Musico Pty. Ltd.

Advise Michael and Musico Pty. Ltd.

[15 Marks]

## SECTION B

**Answer ONE (1) ONLY of the following three essay questions.**

Each question is worth 20 marks and Section B is worth 20 marks in total.

### Question 1

The case of *Cantarella Bros Pty Limited v Modena Trading Pty Limited* [2014] HCA 48 clarified certain issues that may arise when foreign words are being registered as trade marks. Discuss this case and explain the implications of this case.

[20 marks]

### Question 2

In *Roadshow Films Pty Ltd v iiNet*, (2011) 89 IPR 1; [2011] FCAFC 23, Emmett J described iiNet's attitude as "dismissive and, indeed, contumelious", but this "did not amount to authorisation of the primary acts of infringement on the part of iiNet users".

Discuss this case and explain why Emmett J decided that iiNet's attitude "did not amount to authorisation of the primary acts of infringement on the part of iiNet users".

[20 Marks]

### Question 3

Discuss how the decision in *D'Arcy v. Myriad Genetics Inc & Anor* [2014] FCAFC 115 has reformulated the approach to the question of what constitutes 'patentable subject matter' under Australian patent law.

[20 marks]